



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release
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Grassley Repeats Concerns Over Low Settlement of Health Fraud Case

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, late yesterday repeated his concerns to key agency officials that they are poised to finalize a health care fraud settlement that might be much too low and therefore, harmful to taxpayers.

“The most important question is unanswered,” Grassley said. “That’s whether the taxpayers will get their money back from any fraud perpetrated by HCA. I haven’t seen the statistical evidence to show this settlement will fairly compensate the taxpayers for their losses. Until I see the math, I’ll remain skeptical. I look forward to learning more about the government’s case, although I’m getting tired of asking.”

The text of Grassley’s letter to Attorney General John Ashcroft and Health and Human Services Secretary Tommy Thompson follows.

April 23, 2003

The Honorable John Ashcroft
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Tommy G. Thompson
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Attorney General Ashcroft and Secretary Thompson:

I am writing regarding the Senate Finance Committee's (Committee) ongoing investigation into the underlying basis for the "tentative understanding" reached between HCA, Inc. (HCA) and the United States Department of Justice (DOJ). This tentative settlement would resolve the civil litigation with HCA for \$631 million and resolve HCA's administrative liability to the Centers for Medicare and Medicaid Services (CMS) for \$250 million. The Committee initiated this investigation over a year ago because of my unrelenting concern for properly enforcing the False Claims Act (FCA) and for maintaining the integrity of the Medicare Trust Funds.

It is a rare morning these days when newspapers resting on breakfast tables across America are not filled with the latest headlines about corporate bigwigs caught "cooking the books" to enrich themselves at the expense of their employees, shareholders, and ultimately America's taxpayers. Recent government reforms and enforcement efforts have given corporate boardrooms and financial statements a much-needed dose of sunlight, but I fear that those disinfecting rays may not reach the settlements often executed by the federal government with corporations that engaged in, among other things, fraudulent activities.

In my opinion, any settlement that is a good deal for taxpayers should be able to withstand congressional scrutiny. Accordingly, and in the interest of maintaining the integrity of the Medicare Trust Funds, I drafted legislation that will require a nonpartisan, efficient and fair congressional review of the facts and figures underlying any proposed FCA settlement beyond a threshold level. It is apparent that without appropriate congressional oversight, FCA settlements could short-shrift the Medicare Trust Funds by hundreds of millions of dollars.

I know you agree with me that turning a blind eye to corporate fraud is not how government officials should conduct their work on behalf of America's taxpayers. While I appreciate your concerns about maintaining the confidentiality of DOJ and HHS deliberations over particular matters, it would be equally inappropriate for me to ignore information made available to the Committee by credible whistleblowers. Specifically, these whistleblowers are suggesting that the anticipated \$250 million administrative settlement with HCA gives short-shrift to both the Medicare Trust Funds and America's taxpayers. Why? Because the whistleblowers allege that the announced settlement figures are not based on a detailed analysis of, among other things, the pertinent cost reports.

Therefore, I again reiterate my concerns, which have been largely ignored and brushed aside by DOJ and HHS in responding to my letters dated March 14, June 25, and October 17, 2002. Each letter was written in an attempt to gain answers to several allegations. Specifically, the pertinent whistleblower allegations are three-fold:

1. CMS failed to develop any reasonable, substantive and detailed analysis of HCA's liability justifying the proposed administrative settlement; and
2. CMS summarily terminated the HCA cost report evaluation being performed by a CMS contractor; and
3. CMS never performed a comprehensive independent review of the cost reports prior to reaching a tentative understanding to resolve HCA's administrative liability for a flat sum

of \$250 million.

At this time, Committee investigators are aware of, among other things, the following:

- In 1997, in the midst of a serious criminal and civil cost report fraud investigation, the government stopped processing cost reports filed by HCA;
- In 2001, CMS began to develop an audit to resolve HCA's administrative cost report liability, however, rather than proceeding with the planned audit, CMS and HCA agreed to resolve all of HCA's administrative cost report liability from 1993 through July 2001 for a flat sum of \$250 million;
- As a result of this proposed settlement, more than 2600 HCA cost reports were apparently never read, reviewed or examined by the government, and therefore the actual amount that HCA may have overcharged the Medicare program has not been determined appropriately;
- The tentative settlement was apparently reached without the participation of career CMS personnel who were familiar with hospital cost reporting, and that the \$250 million settlement was not supported by any comprehensive internal or external CMS study; and
- Finally, whistleblower statements suggest that this \$250 million settlement figure, contradicts analysis by staff of the Office of Financial Management at CMS that indicated HCA was responsible for up to \$1.8 billion in single damages to the United States.

Given that HCA's track record includes several guilty pleas relating to Medicare cost report fraud, it is especially troubling that its cost reports allegedly were not subjected to heightened scrutiny. At this point, and because DOJ and CMS decided to withhold information pertaining to my inquiries, the Committee is unaware of whether CMS conducted even a cursory review of the thousands of cost reports mentioned above.

Despite my repeated attempts to cast sunlight on the basis behind this tentative settlement, it has been crafted in the dark for apparently a fraction of the damages. In light of the failure of DOJ and CMS to provide satisfactory and timely responses to my concerns, I am forwarding them by this letter to DOJ Inspector General, Glenn Fine, and HHS Acting Principal Deputy Inspector General, Dennis Duquette.

As the Committee's investigation proceeds, we will work with the Inspectors General toward obtaining satisfactory answers to allegations regarding the reasonableness and basis for the HCA settlement. Furthermore, I understand that my investigative staff is arranging a schedule of dates and times to interview appropriate government employees – I trust that they will be made available and will cooperate fully with my inquiries.

At the end of the day, the American taxpayer will know whether they got a fair deal with the HCA settlement. I expect that the logical conclusion to this investigation may result in hearings where CMS, HHS and DOJ will have the opportunity to fully explain whether or not America's

taxpayers were left holding the proverbial "bag" of corporate wrongdoers.

Thank you for your attention to these important matters and please do not hesitate to contact me if you have any concerns.

Sincerely,

Charles E. Grassley
Chairman

cc: Glenn Fine, DOJ Inspector General
Dennis Duquette, HHS Acting Principal Deputy Inspector General